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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
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		09/875,543	June 6, 2001
		First Named Inventor	
		James A. Aviani	
Art Unit		Examiner	
2143		Alina A. Boutah	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). (See REMARKS for Pre-Appeal Brief Request for Review)</p> <p>Note: No more than five (5) pages may be provided.</p>			
<p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>45,752</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p>			
		<p><u><i>Paul P. Kriz</i></u> Signature</p> <p><u>Paul P. Kriz, Esq.</u> Typed or printed name</p> <p><u>508-616-9660</u> Telephone number</p> <p><u>June 26, 2006</u> Date</p>	
<p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>			
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ATTORNEY DOCKET NO.: CIS01-03(3705)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: James A. Aviani, Carl D. Sutton and Douglas A. Gourlay
Serial No.: 09/875,543
For: METHODS AND APPARATUS FOR MANAGING ACCESS TO DATA
THROUGH A NETWORK DEVICE
Filing Date: June 6, 2001
Examiner: Alina A. Boutah
Art Unit: 2143
Conf. No. 6900

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By: Pina L. Butler

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Sir:

PRE-APPEAL BRIEF
REASON FOR REQUEST OF REVIEW OF FINAL REJECTION

Applicants request review of the January 24, 2006 final Office Action because, in Applicants' view, the applied art is insufficient to reject Applicants' claims.

Rejections of Claims 1-36 under 35 U.S.C. § 103(a)

The Examiner has rejected claim 1 under 35 U.S.C. § 103(a) based on the teachings of Brendel et. al, (U.S. Patent 5,774,660) in view of Illnicki, (US. Patent 6,751,677). The Examiner argues that Illnicki teaches the claim limitation of "providing a data transfer approval to the data access device in response to receiving the first response, the data transfer approval authorizing the data access device to establish the communication connection to the client based on the connection establishment information and provide a second response to the second request to the client."

The Examiner admits that Brendel does not disclose, teach or suggest the above claim limitation. The Examiner contends that Illnicki suggests this claim limitation. Applicants disagree with the rejection because Illnicki teaches away from the invention. For example, Illnicki does not forward a data access request (e.g., object invocation)

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from the client through gateway to the target server until after the gateway sets up a secure connection between the user terminal and the target server through the gateway. This is an opposite ordering of the events recited in claim 1. Claim 1 recites “providing a second request to access data to the data access device in response to receiving the first request,” which occurs before providing the data transfer approval.

Object invocation is a confidential communication according to Illnicki. This is shown in figure 5 of Illnicki in which the gateway first authenticates the client and thereafter receives a “Hello” message from the user terminal. The “Hello” message is not a request for data, but is instead an initial communication from the user terminal to invoke a secured connection. As further shown in figure 5 of Illnicki, the gateway then authenticates and thereafter forwards the “Hello” message to the target server. The user terminal and the target server complete a handshake over the secured connection. Finally, the user terminal “invokes the target object” (e.g., sends the request) over the secured connection established by the gateway. (column 8, line 42 to column 9, line 9)

Again, the claimed invention recites “providing a second request to access data to the data access device in response to receiving the first request.” This indicates the request is sent prior to approval, not after as in Illnicki. For example, according to Illnicki, at no time during the handshake process does the gateway forward a data request to the target server prior to setting up the secured connection because doing so would put the communication at risk of being discovered. The whole purpose of setting up a secured link between the user terminal and the target server in Illnicki is to prevent non-authorized persons from discovering any data requests and corresponding retrieved data from a target server. Thus, Illnicki does not teach or suggest sending a data access request to a gateway prior to setting up a secured connection as the Examiner contends. Brendel does not perform this claimed function either.

The rejection of claim 1 is therefore improper. The rejection of independent claims 11, 21, and 22 is also improper because they are similar in scope. Dependent claims associated with 1, 11, 21, and 22 should be allowable as well.

Applicants traverse the rejection of claim 4. The load balancer 54 in Brendel receives a URL from client 10 and forwards the URL to server 52. Server 52 of Brendel

then serves web pages to client 10. The Examiner has not pointed out any language in Brendel or Illnicki indicating that the load balancer or its equivalent sends multiple requests to respective servers for a single received request from a client. Inter alia, claim 4 recites “providing a plurality of second requests to a plurality of data access devices” in response to receiving the first request. The cited reference only discloses forwarding a request to a single server and serving data to a requesting client. The rejection of claim 4 is therefore improper.

Regarding claim 5 (which depends from claim 4), contrary to the Examiner’s assertion, there is no indication that load balancer in Brendel sends a request for data to multiple servers and, in response to the request, the servers responding with usage information associated with the servers. There is additionally no indication in Brendel that the load balancer receives communications from multiple servers.

Regarding claim 6, contrary to the Examiner’s assertion, mere use of a frame checksum in Brendel does not suggest a transmit window as in the claimed invention. They are not equivalent. For example, as well known, a frame checksum is an error detection mechanism to determine whether a packet transmission failure occurs during a communication. The “current transmit window” in the claimed invention is not used for detection of failures but is instead used to provide a window length for transmitting the second response to the client. Accordingly, the rejection is improper.

Regarding claim 7, Applicants submit that there is no indication in the cited references that the load balancer notifies a respective server of a client to serve data and a “backup” location identifier of a server that can serve the data if the respective server is unable to service the client according to the claimed invention. Brendel merely indicates use of a backup path in case one path happens to fail.

Regarding claim 9, Examiner cites Brendel at column 12 lines 7-29. This passage merely indicates a standard handshake between the client and the load balancer (column 12, lines 23-24). There is no mention or suggestion in the cited reference that the load balancer sends the server an acknowledgment that the client received a message from the server. Claim 9 recites that the data communication device receives an ACK from the client indicating that the client received a

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communication from the data access device. Further, claim 9 recites that the data communications device sends an ACK to the data access device so that the data access device receives feedback that the client received the communication from the data access device. Applicants therefore submit that the rejection is improper.

Regarding claim 10, the Examiner cites Brendel column 12 line 59 to column 13 line 4. In fact, the cited passage teaches away from the claimed invention because it recites a technique of a server not closing a connection. The rejection is thus improper.

Claim 40 recites a specific type of bidding process according to an embodiment of the invention. Neither reference discloses this unique technique of bidding for servicing, especially in the context of servicing the requests other than via communications through the data communication device. Brendel only recites that the load balancer determines which server is best suited to serve the request. There is no indication that the load balancer performs a bidding process with each server.

Regarding claim 44, the Examiner asserts that figure 11 of Brendel teaches the claimed invention. Applicants respectfully submit that the cited figure only indicates that the server receiving a request provides an acknowledgment back to the load-balancer. Thus, the load-balancer uses the acknowledgment to learn that the server received the request, not that the server can handle the request. Accordingly, the cited passage does not teach or suggest the claimed invention and Applicants respectfully request allowance of claim 44.

Claim 45 includes similar limitations as discussed above regarding unique request sequence numbers and should be allowable for similar reasons.

To reject claim 46, the Examiner asserts figure 10. Applicants respectfully submit that the cited figure only indicates that the load balancer performs load-balancing. There is no indication that the load-balancer communicates with the servers and receives messages from the servers, especially in response to receiving a webpage request from a browser. The load-balancer 54 keeps track of which requests are being processed by each server in a server farm. This is not equivalent to the claimed invention. Also, the claim recites that forwarding a plurality of second requests in response to receiving a first request. None of the cited references teaches this.

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Claim 48 (which depends from claim 47) includes use of request sequence numbers not mentioned by the cited references. Also, claim 48 recites that the data communication device generates "respective second requests associated with each of the multiple first requests." The passages cited by the Examiner indicate only indicate a single request for each request. Thus, Applicants request allowance of claim 48.

Regarding claim 49, the Examiner indicated Brendel does not address the issue of receiving multiple requests from the same client and therefore does not teach or suggest use of request sequence numbers to keep track of responses to the second requests. Thus, Applicants request allowance of claim 49.

Applicants contend that claim 50 includes multiple novel limitations as discussed above and has been improperly rejected.

Claims 23, 29, 35, and 36 as filed are written from the perspective of a data access device receiving a client request from a data communication device. Claims 23, 29, 35 and 36 include analogous limitations as in claim 1 and are patentably distinct over the cited prior art for similar reasons. Applicants therefore request allowance of claims 23, 29, 35, and 36 as well as respective dependent claims 24-28 and 30-34.

Applicants have reviewed the rejection of pending claims 26 and 32 and are unable to find proper support to reject these claims. The Examiner cites column 9 lines 18-40 of Brendel (US 5,774,660) in the Final Office Action to reject these claims. There is no plausible argument that this passage includes specific language disclosing or suggesting that the claimed "connection establishment information includes a location identifier for a second data access device suitable for use if requested content in the first request is unavailable from the first access device." An example would be to send a server and identifier of another server if the original server is unable to respond to a request. There is no discussion in this cited passage regarding use of a location identifier in the event of unavailability. Hence, these claims are be allowable as well.



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Dated: June 26, 2006